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INTERSTATE COMMERCE COMMISSION

EQUIPMENT LEASE AGREEMENT

Dated as of October 1, 1985

Between

CHASE MANHATTAN SERVICE CORPORATION,

Lessor

and

TRAILER TRAIN COMPANY

Lessee

To the extent, if any, that this Lease constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction) no security interest in this Lease may be created through the transfer or possession of any counterpart other than the original executed counterpart, which shall be identified as the counterpart containing the receipt therefor executed by the Indenture Trustee (as defined herein) on the signature page thereof.

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## EQUIPMENT LEASE AGREEMENT

This EQUIPMENT LEASE AGREEMENT, dated as of October 1, 1985, between CHASE MANHATTAN SERVICE CORPORATION, a New York corporation, (herein, together with its successors and assigns, called "Lessor"), and TRAILER TRAIN COMPANY, a Delaware corporation (herein, together with its successors and assigns, called "Lessee").

### WITNESSETH:

A. Lessor and Lessee are parties to a Participation Agreement which contemplates the lease by Lessor to Lessee of the Units as provided in this Lease.

B. Lessor wishes to lease the Units to Lessee, and Lessee wishes to lease the Units from Lessor, all on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements set forth herein, Lessor and Lessee hereby agree as follows:

### 1. DEFINITIONS.

1.1. General. Unless the context shall otherwise require, the following terms shall have the following meanings for all purposes of this Lease;

"Affiliate" shall mean, with respect to any Person, any other Person controlling, controlled by, or under common control with such Person.

"After-tax Basis" shall mean, with respect to any payment received or deemed to have been received by any Person, the amount of such payment supplemented by a further payment to that Person so that the sum of the two payments shall, after deduction of all taxes and other charges (taking into account any credits, to the extent the Lessor determines in good faith such credits were used against a liability against tax, or deductions arising therefrom and the timing thereof resulting from the receipt, actual or constructive, or accrual of such two payments imposed by any Taxing Authority), be equal

to such payment received or deemed to have been received. In determining whether credits were used, the Lessor shall treat all leasing transactions that generate credits on a consistent basis.

"Applicable Storage Period" shall mean 180 days, except that if this Lease is terminated pursuant to Section 15.1 the Applicable Storage Period shall not be limited to 180 days but shall be for a period continuing until the Indenture Trustee or the Lessor shall have leased, sold or otherwise disposed of the Units.

"Applicable Term" shall mean with respect to any Unit, the Basic Term with respect to such Unit and the Renewal Term, if applicable to such Unit, but excluding any period after the date on which the Lease is terminated with respect to such Unit.

"Appraisal Procedure" shall mean the following procedure for determining the Fair Market Sales Value of any property: If either party hereto shall have given written notice to the other requesting determination of such value by the Appraisal Procedure, the parties shall consult for the purpose of appointing one qualified independent appraiser by mutual agreement. If no such appraiser shall be so appointed within fifteen days after such notice shall have been given, each party shall appoint an independent appraiser (which shall not be a manufacturer of such property) within twenty-five days after such notice shall have been given, and the two appraisers so appointed shall, within thirty days after such notice shall have been given, appoint a third independent appraiser (which shall not be a manufacturer of such property). If no such third appraiser shall be so appointed within thirty days after such notice shall have been given, either party may apply to the American Arbitration Association (or any successor thereto) for the appointment of an appraiser in the City of New York or such other city as shall be agreed upon by the parties, and both parties shall be bound by any appointment made by such Association. Each appraiser appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Sales Value of the property in question within thirty days after his appointment. If the parties shall have appointed a single appraiser, his determination of value shall be final and binding.

If three appraisers shall have been appointed as hereinabove set forth, the values determined by the three appraisers shall be averaged, the determination which shall differ most from such average shall be disregarded, the remaining two determinations shall be averaged, and such average shall be final and binding.

"Basic Lease Percentage", as applied to any Unit, shall mean the applicable percentage with respect to each semi-annual period of the Basic Term, as set forth in Schedule 1 hereto.

"Basic Rent" shall mean the rent determined pursuant to Section 3.2 hereof or, in the case of the Renewal Term, Section 18 hereof.

"Basic Term" shall mean, with respect to any Unit, the period commencing with January 2, 1986 and ending on the earlier of (i) January 2, 1996, or (ii) the date this Lease is terminated with respect to such Unit as provided herein.

"Business Day" shall mean any day other than (i) a Saturday or Sunday and (ii) a day on which banking institutions in the States of Maryland (or the State in which the Indenture Trustee's principal office may hereafter be located), Illinois or New York shall be permitted or required by law or executive order to be closed.

"Certificate of Acceptance" shall have the meaning set forth in Section 2.2 hereof.

"Closing Date" shall mean the applicable Closing Date set forth in the Participation Agreement on which settlement is made for any Unit.

"Code" shall mean the Internal Revenue Code of 1954, as amended.

"Collateral Agreement" shall have the meaning set forth in the Participation Agreement.

"Default Rate" shall mean as applied to any portion of Interim Rent, Basic Rent or Supplemental Rent payable with respect to the Secured Notes, a per annum rate



equal to 1% in excess of the Indenture Debt Rate, and as applied to any other portion of Interim Rent or Basic Rent or any other amount (including without limitation any payments to reimburse Lessor pursuant to Section 22.10 hereof) a per annum rate equal to the greater of 12.3% or 1% in excess of the Prime Rate.

"Delivery Date" shall mean the date on which any Unit is accepted by the Lessee as contemplated by Section 2.2 hereof.

"Event of Default" shall have the meaning set forth in Section 14 hereof.

"Event of Loss" shall mean, with respect to any Unit, any of the following events or condition: (i) the destruction of such Unit, or damage to such Unit to an extent which, in the good faith and reasonable opinion of Lessee, shall render repair impracticable or uneconomical; (ii) the confiscation, theft, disappearance or seizure of, or the requisition of title to or use of, such Unit, as shall result in the loss of use or possession of such Unit by Lessee or any sublessee for a period of six months or longer; or (iii) the imposition of a Required Alteration (as defined in Section 9.2 hereof) which the Lessor determines is not economically feasible as provided in Section 9.2 hereof, except as otherwise set forth in the proviso in such Section 9.2.

"Excluded Amount" shall have the meaning set forth in the Indenture.

"Expenses" shall have the meaning set forth in Section 13 hereof.

"Fair Market Sales Value" shall mean the purchase price for the number of Units in question that would be agreed to in an arm's-length transaction between an informed and willing buyer (other than a buyer currently in possession) and an informed and willing seller under no compulsion to sell or lease.

"First Closing Date" shall have the meaning set forth in the Participation Agreement.

"Holder" shall mean each Lender and each holder from time to time of any Secured Note.

"Imposition" shall have the meaning set forth in Section 12 hereof.

"Indemnified Party" shall have the meaning set forth in Section 13 hereof.

"Indemnatee" shall have the meaning set forth in Section 12 hereof.

"Indemnity Agreement" shall have the meaning set forth in the Participation Agreement.

"Indenture" shall mean the Trust Indenture dated as of October 1, 1985 between the Lessor and the Indenture Trustee and which has been filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 concurrently with the execution hereof.

"Indenture Debt Rate" for any day shall mean the rate of interest on the Secured Notes then outstanding under the Indenture in effect on such date without giving effect to any increase therein as a result of late payments or other defaults.

"Indenture Trustee" shall mean Mercantile-Safe Deposit and Trust Company in its capacity as Trustee under the Indenture and shall include any successor Trustee under the Indenture.

"Interim Rent" shall mean for each Unit for each day the daily average equivalent of the Basic Rent (as shown is Schedule 1 hereto) for the Basic Term multiplied by the Purchase Price of such Unit.

"Interim Term" shall mean, with respect to any Unit, the period commencing on the Closing Date for such Unit and ending on January 1, 1986.

"this Lease" shall mean this Equipment Lease Agreement as originally executed and delivered, and as it may from time to time be amended or supplemented.

"Lease Payment Date" shall mean July 2, 1986 and each January 2 and July 2 occurring thereafter during the Applicable Term.

"Lenders" shall have the meaning set forth in the Participation Agreement.

"Lessee" shall have the meaning set forth in the Preamble hereto.

"Lessor" shall have the meaning set forth in the Preamble hereto.

"Lessor's Liens" shall mean any Liens which result from claims against the Lessor not related or connected to the ownership, leasing, use or operation of any of the Units, its status as Lessor under the Lease or any other transaction contemplated by the Participation Agreement or any other Operative Document, but including, however, all liens in respect of income taxes payable by Lessor arising out of receipt of rentals and other payments under the Lease and other proceeds from the Units and all other taxes arising as aforesaid to the extent that Lessee is not obligated to discharge the same under the Lease.

"Lien" shall mean any interest in property securing an obligation owed to, or a claim by, any Person other than the owner of the property, whether such interest shall be based on the common law, statute, contract or conveyance, including, without limitation, the security interest or lien arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt, or from a lease, consignment or bailment for security purposes, and reservations, exceptions, easements, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting property.

"Manufacturers" shall have the meaning set forth in the Participation Agreement.

"Minimum Value" shall mean with respect to any Unit at any date the principal of and interest on the Secured Notes which would be required by the Indenture to be prepaid on such date as a result of the occurrence with respect to such Unit of an Event of Loss.

"Net Economic Return" shall have the meaning set forth in Section 6.1 of the Indemnity Agreement.

"Operative Documents" shall have the meaning set forth in the Participation Agreement.

"Part" shall have the meaning set forth in Section 9.1 hereof.

"Participation Agreement" shall mean the Participation Agreement dated as of October 1, 1985 among Lessor, Lessee, the Indenture Trustee and the Lenders, as it may from time to time be amended.

"Person" shall mean and include an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization or a government or political subdivision thereof.

"Prime Rate" shall mean, for any day, the prime commercial lending rate of interest from time to time announced by The Chase Manhattan Bank (National Association) at its principal office in New York, New York.

"Purchase Order" shall have the meaning set forth in the Participation Agreement.

"Purchase Order Assignment" shall have the meaning set forth in the Participation Agreement.

"Purchase Percentage", as applied to all Units, shall mean 40%.

"Purchase Price" shall mean the purchase price payable to a Manufacturer with respect to any Unit pursuant to the Purchase Order for such Unit, and shall include transportation costs and any applicable excise tax or sales tax and any other charges or carrying costs paid on or prior to the Closing Date for such Unit.

"Removable Voluntary Addition" shall have the meaning set forth in Section 9.3 hereof.

"Renewal Rent" shall have the meaning set forth in Schedule 1 hereto.

"Renewal Term" shall mean, with respect to all Units, the period for which this Lease is renewed with respect to such Unit pursuant to Section 18.1 hereof.

"Rent" shall mean and include all Basic Rent, Interim Rent and Supplemental Rent.

"Required Alterations" shall have the meaning set forth in Section 9.2 hereof.

"Responsible Officer" shall mean any corporate officer or assistant officer of Lessee who, with respect to the subject matter of any covenant, agreement or obligation contained in this Lease, in the normal performance of his operational responsibilities does or should have knowledge of such matter and the requirements of this Lease with respect thereto.

"Secured Notes" shall have the meaning set forth in the Participation Agreement.

"Stipulated Loss Value" for any Unit, as of any Lease Payment Date, shall mean an amount equal to the percentage specified in Schedule 2 hereto applicable to such Lease Payment Date of the Purchase Price of such Unit; provided, however, that if the amount so determined is less the Minimum Value at such date, the Stipulated Loss Value shall be such Minimum Value. During the Renewal Term, Stipulated Loss Value shall be determined as provided in Section 18.1 hereof.

"Supplemental Rent" shall mean all amounts other than Basic Rent and Interim Rent, payable by Lessee hereunder, whether or not designated as Supplemental Rent in any particular provision hereof.

"Tax Indemnity Cap" shall mean 5.971744% (subject to adjustment as provided in Section 3.4 hereof).

"Taxing Authority" shall mean any authority that asserts power to impose tax by reason of (a) the Units being located within the jurisdiction of such authority, (b) the transactions contemplated by the Operative Documents having a nexus sufficient to permit the imposition of tax with such authority, or (c) the Lessee or any person in possession of the Units having a nexus

sufficient to permit the imposition of tax with such authority.

"Trust Estate" shall have the meaning set forth in the Indenture.

"Unit" shall mean and include each of (and "Units" shall mean all of) the 202 new five-unit container-well cars listed in Schedule 3 hereto.

"Voluntary Additions" shall have the meaning set forth in Section 9.3 hereof.

1.2. Construction of References. The terms defined in this Lease shall, for purposes of this Lease, all Exhibits to this Lease or any other Operative Document and any certificates, instruments, documents or agreements executed in connection with this Lease or the other Operative Documents, have the meanings assigned to them and shall include the plural as well as the singular. All references in this Lease to designated Sections and other subdivisions are to the designated Sections and other subdivisions of this Lease, and the words "herein," "hereof," and "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Section or other subdivision. Except as otherwise indicated, all the agreements or instruments herein defined shall mean such agreements or instruments as the same may from time to time be supplemented or amended or the terms thereof waived or modified to the extent permitted by, and in accordance with, the terms thereof.

2. PURCHASE, ACCEPTANCE AND LEASE OF UNITS. The following provisions shall govern the purchase, acceptance and lease of the Units:

2.1. Intent to Lease and Hire. Subject to all the terms and conditions of this Lease and of the Participation Agreement, Lessor hereby agrees to purchase each Unit from Lessee pursuant to the Participation Agreement and the applicable Purchase Order Assignment and to lease such Unit back to Lessee hereunder, and Lessee hereby agrees to lease such Unit from Lessor on the terms set forth herein. This Lease shall constitute a separate lease of each Unit subject hereto, in each case for the Interim Term and the Applicable Term with respect to the Unit in question.

2.2. Inspection and Acceptance. Lessee will inspect each Unit being tendered to Lessee by the Manufacturer which Lessee desires to sell to Lessor and to lease back pursuant to this Lease, and, if such Unit is found to be in good order and in compliance with the applicable Purchase Order, will accept delivery of such Unit and will execute a Certificate of Acceptance (the "Certificate of Acceptance") in the form attached as Exhibit A hereto with respect to such Unit. Promptly after the execution of a Certificate of Acceptance and in any event on or before the Closing Date for such Unit, Lessee will deliver such Certificate of Acceptance to Lessor.

2.3. Certificate of Acceptance. Lessee's execution and delivery of a Certificate of Acceptance with respect to each Unit pursuant to Section 2.2 hereof shall conclusively establish that, as between Lessor and Lessee, but without limiting or otherwise affecting Lessee's or Lessor's rights, if any, against the Manufacturer thereof, such Unit is acceptable to and accepted by Lessee under this Lease and is subject to the limitations of Section 4.1 hereof notwithstanding any defect with respect to design, manufacture, condition or in any other respect, and that such Unit is in good order and condition and appears to conform to the specifications applicable thereto and to all applicable governmental requirements and specifications.

2.4. Use by Lessee. If (i) no Event of Default shall have occurred and be continuing and (ii) this Lease shall not have been previously terminated with respect thereto or have expired, Lessee shall, subject to all of the terms and conditions of this Lease, be entitled to the possession and use of each Unit accepted and delivered under this Lease. Notwithstanding the foregoing or anything to the contrary contained in this Lease, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Indenture Trustee under the Indenture; and if an Event of Default (as defined in the Indenture) shall occur under the Indenture, the Indenture Trustee may terminate this Lease (or rescind its termination), all as provided therein; provided, however, that (i) so long as no Event of Default exists under this Lease, (ii) the Lessee is in compliance with Section 20.1 of this Lease and (iii) Rent (other than Excluded Amounts) is entitled to be and is applied to the obligations payable to the Lenders and the Indenture Trustee under the Indenture,

this Lease may not be terminated by the Indenture Trustee and Lessee shall be entitled to the rights of possession and use of the Units as herein provided.

3. RENT. Rent under this Lease shall be paid in accordance with the following provisions:

3.1. Interim Rent. Lessee hereby agrees to pay to Lessor, in immediately available funds, as Interim Rent for each Unit, on January 2, 1986, the Interim Rent for the Interim Term for such Unit.

3.2. Basic Rent. Lessee hereby agrees to pay to Lessor with respect to each Unit then subject to this lease, in immediately available funds, Basic Rent during the Applicable Term in consecutive semi-annual installments, in arrears, on July 2, 1986 and on each Lease Payment Date thereafter (including any Lease Payment Date on which the Stipulated Loss Value is to be paid in accordance with the provisions of this Lease) to and including the Lease Payment Date that is the last day of the Applicable Term. Each such installment of Basic Rent payable during the Basic Term shall be in an amount equal to the Basic Lease Percentage for the semi-annual period of the Basic Term covered by such installment multiplied by the Purchase Price for such Unit. Each such installment of Basic Rent payable during the Renewal Term shall be in the amount determined pursuant to Section 18 hereof. Notwithstanding the foregoing, at no time shall the aggregate Basic Rent payable during the Basic Term be less than an amount sufficient to pay the installments of principal and interest on the Secured Notes as the same are scheduled to become due and payable in accordance with the terms of the Indenture.

3.3. Supplemental Rent. Lessee hereby agrees to pay to Lessor, or to any other Person who shall be entitled thereto as provided herein, any and all Supplemental Rent promptly as the same shall become due and owing, and in the event of any failure on the part of Lessee so to pay any Supplemental Rent, Lessor shall have all rights, powers, privileges and remedies provided for herein or by law or equity or otherwise in the case of nonpayment of other kinds of Rent. Lessee will pay to Lessor, upon demand, as Supplemental Rent, to the extent not prohibited by applicable law, interest at the Default Rate on any part or installment of Interim Rent or Basic Rent not paid when due



for any period for which the same shall be overdue, and will pay upon demand, to the extent not prohibited by applicable law, interest at the Default Rate on any part of any payment of Supplemental Rent other than (i) such interest on delinquent payments, (ii) any payment of Supplemental Rent as to which interest to the date of payment is expressly provided for elsewhere in this Lease and (iii) any payment of Supplemental Rent required by this Lease to be made to any governmental authority (any interest on, or penalty in respect of, payments to any governmental authority required to be made by Lessee under this Lease being payable by Lessee to such governmental authority as Supplemental Rent) due hereunder and not paid when due for any period for which the same shall be overdue, such payment to be made to the Person to receive the overdue Supplemental Rent in respect of which such interest is to be paid.

3.4. Adjustments. If (i) the Units are not funded in accordance with the assumptions set forth in Exhibit B hereto, which assumptions were used to compute the Interim Rent, Basic Rent, Basic Lease Percentages, Renewal Rent, Stipulated Loss Values and the Tax Indemnity Cap or (ii) the Purchase Price of any Unit is effectively reduced because of Lessor's receipt of a warranty payment from a Manufacturer, the Interim Rent, Basic Rent, Stipulated Loss Value (subject to Section 20.2 hereof, the last sentence of Section 3.2 hereof) and the proviso to the definition of "Stipulated Loss Value", Renewal Rent and the Tax Indemnity Cap shall be adjusted if necessary to reflect such change in such assumptions, funding dates or Purchase Price so that Lessor's Net Economic Return will not be increased or decreased. The Basic Rent, Renewal Rent and Stipulated Loss Values shall also, subject to Section 20.2 hereof, the last sentence of Section 3.2 hereof and the proviso to the definition of "Stipulated Loss Value", be adjusted to the extent required by Section 10 of the Indemnity Agreement provided that in the event that any such adjustment is caused by a change in tax law after the First Closing Date, the maximum increase in the Basic Lease Percentage shall be no greater than the Tax Indemnity Cap. The amount of all adjustments contemplated by this Section 3.4 shall be determined by Lessor in good faith and specified by notice to Lessee with a copy to the Indenture Trustee. The Lessee shall have the right, upon demand, to have a firm of any of the eight largest U.S. independent public accountants selected by the Lessee and approved by the Lessor, which

approval shall not be unreasonably withheld, review any calculations made by the Lessor to determine the consistency and reasonableness of the methods and the assumptions used in such calculations with those used by the Lessor in originally evaluating this transaction and the accuracy of such computations based on such methods and assumptions; provided that such firm shall keep such methods and assumptions confidential, except as to the Lessee.

3.5. Place of Payment. All payments of Interim Rent, Basic Rent and Supplemental Rent (other than Excluded Amounts) hereunder shall be paid to Lessor at One Chase Manhattan Plaza, New York, New York 10081, Attention: Administrator - Investment Leasing or in accordance with such other instructions as Lessor may specify by notice to Lessee; provided, however, that unless and until Lessee shall have received written notice from the Indenture Trustee that the security interest created by the Indenture in the Trust Estate shall have been released, all payments of Interim Rent and Basic Rent shall instead be paid to the Indenture Trustee for credit to its Corporate Trust Account No. 620081-8 with advice that payment is "Re: Trailer Train - CMSC 1985 Lease" or in accordance with such other instructions as the Indenture Trustee may specify from time to time by notice to Lessee with a copy to Lessor.

4. DISCLAIMER OF WARRANTIES; NET LEASE; NO OFFSET, ETC.; NON-TERMINABILITY.

4.1. Disclaimer of Warranties. NEITHER LESSOR, NOR THE INDENTURE TRUSTEE NOR ANY LENDER SHALL BE DEEMED TO HAVE MADE, AND LESSOR FOR ITSELF AND ON BEHALF OF THE INDENTURE TRUSTEE AND EACH LENDER HEREBY EXPRESSLY DISCLAIMS, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE VALUE, TITLE, MERCHANTABILITY, COMPLIANCE WITH SPECIFICATIONS, CONDITION, SAFETY, DESIGN, OPERATION OR FITNESS FOR ANY PARTICULAR OR GENERAL USE OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY PORTION THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE UNITS OR ANY PORTION THEREOF, except for the warranties expressly made by Lessor in Section 3.2.4 of the Participation Agreement, it being intended, understood and agreed that, the Units were selected by the Lessee on the basis of its own judgment and that except as explicitly provided herein, all risks incident to the Units and the

ownership and leasing of the Units as provided herein, as between Lessor, Indenture Trustee, the Lenders and Lessee, are to be borne by Lessee. The provisions of this Section 4.1 have been specifically negotiated as a basis of the bargain contained in this Lease, and, except to the extent otherwise explicitly stated, the foregoing provisions are intended, understood, acknowledged and agreed to be a complete exclusion and negation of any warranties by Lessor, the Indenture Trustee or the Lenders express or implied, with respect to the Units, whether arising under the Uniform Commercial Code or any similar law now or hereafter in effect, or otherwise.

4.2. Net Lease. This Lease is a net lease, and it is intended, understood, acknowledged and agreed that Lessee will pay all costs, charges, fees, assessments, expenses and taxes of every character, whether foreseen or unforeseen, ordinary or extraordinary, in connection with the manufacture, construction, installation, delivery, ownership, lease, transportation, use, operation, maintenance, repair, service, insurance, replacement, restoration, renewal, improvement and return of the Units other than amounts specifically excluded by the provisions of Sections 12 and 13 hereof.

4.3. No Offset, Etc.. The Rent which Lessee is or shall be obligated to pay shall be paid without notice or demand, and shall not be affected by any circumstances (except payment or as otherwise expressly provided in Section 11.1 hereof), including, without limitation, (i) any set-off, counterclaim, recoupment, abatement, suspension, deduction or defense or other right, power, privilege, remedy or immunity which Lessee may have against or in respect of Lessor, the Indenture Trustee, any Holder, the Manufacturer or anyone else for any reason whatsoever, (ii) any defect in the title, merchantability, compliance with specifications, condition, design, operation or fitness for use of, or any damage to or loss of possession or use or destruction of, any or all of the Units or any portion thereof, from whatsoever cause, including, without limitation, confiscation, requisition or other taking by any governmental authority, any person acting under governmental authority, any Liens with respect to any of the Units or otherwise, (iii) any failure to commence, or interruption or cessation in, the use, possession or operation by Lessee of any or all of the Units or any portion thereof by reason of

the action of any public or private person, whether by eviction by paramount title or for any other reason whatsoever, (iv) any bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution or other proceeding by or against Lessor, the Indenture Trustee or any Holder, (v) the prohibition of or other restriction against Lessee's use of all or any of the Units, the interference with such use by any Person or the invalidity, illegality or unenforceability of any provision of the Operative Documents or the Secured Notes or any other infirmity hereunder or thereunder, or any lack of power or authority of Lessor or any other person to enter into, or perform in accordance with the terms of the Operative Documents or the Secured Notes, (vi) any breach by Lessor, the Indenture Trustee or any Lender of its warranties set forth in Section 3 of the Participation Agreement, (vii) any car contract or sublease, or (viii) any other circumstances or happening whatsoever, whether or not similar to any of the foregoing, it being the intention, understanding and agreement of the parties hereto, and the basis of the bargain, that the obligations of Lessee hereunder shall be absolute and unconditional, shall be separate and independent covenants and agreements and shall continue unaffected unless and until the requirement to pay or perform the same shall have been terminated pursuant to an express provision of this Lease; provided, however, that nothing in this Section 4.3 shall be construed to prevent Lessee from exercising any rights which Lessee may have against any Person in an independent proceeding.

5. Liens. Lessee will not, directly or indirectly, create, incur, assume or suffer to exist any Lien on or with respect to its interest under this Lease, any Unit, any part of any Unit, the title to any Unit or any interest in any Unit, or the subleases or any interest in any sublease, except (i) Lessor's Liens, (ii) the respective rights of Lessee, Lessor and the Indenture Trustee and each Holder as provided in the Operative Documents, (iii) Liens consisting of subleases permitted by Section 7 hereof, (iv) Liens on and consisting of Removable Voluntary Additions, (v) Liens for taxes either not yet due or being contested in accordance with the provisions of Section 16 hereof so long as such contests shall not interfere with the payment or receipt and retention of Rent (other than Supplemental Rent consisting of taxes being contested), (vi) materialmen's, mechanics', workmen's, repairmen's, employees' or other like

Liens arising in the ordinary course of business, which shall not be delinquent; or which shall have been bonded, or the enforcement of which shall have been suspended (but then only for the duration of such suspension) and (vii) Liens arising out of judgments or awards against Lessee which shall have been bonded or which Lessee shall be contesting in accordance with the provisions of Section 16 hereof. If any Lien described in and not excepted by the immediately preceding sentence shall arise at any time, Lessee will promptly, at its own expense, duly take such action as may be necessary to discharge any such Lien. Lessee shall not have any right, power, privilege or authority to create or incur any Lien upon Lessor's interest in the Units and notice is hereby given to all contractors, subcontractors, laborers, materialmen and other persons that Lessor will not be liable for any labor, services or materials furnished to Lessee and that no Liens for any such labor, services or materials shall attach to or affect Lessor's interest in the Units.

#### 6. PROTECTION OF LESSOR'S AND INDENTURE TRUSTEE'S INTERESTS.

6.1. Recording. The Lessee, at its own expense, will cause this Lease and the Indenture to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303(a). The Lessee will, at its own expense, undertake the filing, registering, deposit, and recording required of the Lessor under the Indenture and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, re-register, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Indenture Trustee for the purpose of proper protection, to their satisfaction, of the respective interests of the Lessor and the Indenture Trustee in the Units, or for the purpose of carrying out the intention of this Lease, the Indenture or any Purchase Agreement Assignment; provided, however, that the Lessee shall not be required to take any such action in respect of any jurisdiction outside the United States if (1) the Lessee deems such action to be unduly burdensome, (2) after giving effect to the failure to take such action, the Lessee has taken all action by law to protect the title of the Lessor to and to the security interest of the Indenture Trustee in Units having a Purchase Price of not less than 85% of the

aggregate Purchase Price of all of the Units then subject to this Lease, and (3) any Unit at any time located in such jurisdiction shall have been marked with the markings specified in §6.2 hereof.

The Lessee will promptly furnish to the Lessor and the Indenture Trustee evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Lessor and the Indenture Trustee. This Lease and the Indenture shall be filed with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

6.2. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule 3 hereof with respect to such Unit and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words, "Ownership subject to a Security Agreement filed with the Interstate Commerce Commission", or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law or reasonably requested in order to protect the Lessor's title to and the Indenture Trustee's security interest in such Unit and the rights of the Lessor under this Lease and of the Indenture Trustee under the Indenture. The Lessee will not place or permit any such Unit to be placed in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace or cause to be replaced promptly any such name and words which may be removed, defaced, obliterated or destroyed. The Lessee will not change or permit to be changed the identifying number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Lessor and the Indenture Trustee and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Indenture shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Lessor and the Indenture Trustee an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the interests of the Lessor and the Indenture Trustee in such Units and no filing, recording, deposit or

giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interest of the Lessor and the Indenture Trustee in such Units.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may permit the Units to be lettered with the names, trademarks, initials or other insignias customarily used by the Lessee or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of its rights to use the Units under this Lease, and the Units may be lettered in an appropriate manner for convenience of identification of the interest of the Lessee therein.

6.3. Further Assurances. Lessee will, at Lessee's own expense, promptly and duly execute and deliver, or cause to be promptly and duly executed and delivered, to Lessor and the Indenture Trustee, such agreements, instruments and other documents (including, without limitation, any assurances and any conveyances, assignments, bills of sale, financing statements and continuation statements) as may be necessary or as Lessor or the Indenture Trustee may from time to time reasonably request, in order to carry out more effectively the intent and purpose of this Lease, to establish, protect and preserve the rights, powers, privileges, remedies and immunities reserved or created, or intended to be reserved or created, by or in favor of Lessor hereunder and under the Collateral Agreement to establish, protect and preserve Lessor's title to the Units and Lessor's security interest under the Collateral Agreement, and to create, protect and preserve, for the benefit of the Holders, a valid, perfected security interest in the Trust Estate under the Indenture, which is free of any Liens except for Liens permitted by Section 5 hereof or permitted under the Granting Clauses of the Indenture, which action shall include, without limitation, if requested by Lessor or the Indenture Trustee, at Lessee's own expense, the recording or filing of counterparts hereof, or of such other agreements, instruments and documents with respect thereto (including financing statements and continuation statements) in accordance with the laws of such jurisdictions as Lessor

or the Indenture Trustee may from time to time reasonably request.

6.4.. Location of Business Lessee agrees to give Lessor and the Indenture Trustee 30 days' prior written notice of the date on which it intends to locate in any city or state other than Chicago, Illinois and to execute appropriate financing statements with respect to the security interests created by the Operative Documents at least five days prior to any such relocation.

## 7. PROVISIONS RELATING TO USAGE OF THE EQUIPMENT

7.1. Uses. So long as no Event of Default or event which with notice or lapse of time or both would constitute an Event of Default has occurred and is continuing and the Lessee shall have fully complied with the provisions of this Section 7.1, the Lessee shall be entitled to the possession of the Units and also to sublease the Units to, or to permit their use under the terms of car contracts by, a sublessee or user incorporated in the United States of America (or any State thereof or the District of Columbia), Mexico or Canada (or any Province thereof), upon lines of railroad owned or operated by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia), Mexico or Canada (or any Province thereof), or over which such railroad company or companies have trackage rights or rights for operation of their trains, and upon connecting and other carriers in the usual interchange of traffic in the continental United States, only upon and subject to all the terms and conditions of this Lease; provided, however, that if the Lessee subleases, uses or permits the use of any Unit in Mexico or Canada (or any Province thereof), the Lessee shall, except as otherwise provided in Section 6.1 hereof, first have (a) taken all necessary action to protect the right, title and interest of the Lessor and the Indenture Trustee in the Units to be so subleased or used and (b) furnish the Lessor and the Indenture Trustee with an opinion of Mexican or Canadian counsel, as the case may be, satisfactory to the Lessor and the Indenture Trustee to the effect that such action is all that is necessary to protect the right, title and interest of the Lessor and the Indenture Trustee in such Units; provided, further, that no such sublease and/or carhire shall extend beyond the Applicable Term.



7.2. Subject to Lease. Each sublessee, if any, of any sublease referred to in Section 7.1 hereof shall expressly agree that its rights in any Unit under such sublease are subject and subordinate to the rights of Lessor hereunder and the Indenture Trustee under the Indenture and that, if any Event of Default hereunder or thereunder is continuing, Lessor or Indenture Trustee shall have the right to take possession of any such Unit free and clear of any rights of such sublessee under such sublease, to cause any rent payable under any such sublease to be paid directly to Lessor or Indenture Trustee or as Lessor or Indenture Trustee may direct and to exercise any rights of Lessee (as lessor) under such sublease.

#### 8. CERTAIN COVENANTS OF LESSEE.

8.1. Maintenance and Operation. Lessee, at its own expense, will maintain, service and repair each Unit (or cause the same to be maintained, serviced and repaired) to the same extent as Lessee would, in the prudent management of its properties, maintain, service and repair comparable equipment (if owned, leased or otherwise used by Lessee) and, in any event, to the extent necessary to maintain such Unit in as good repair, working order and operating condition as when delivered, ordinary wear and tear excepted, and in compliance with applicable industry standards, and in compliance with any applicable requirements of law or of any governmental authority having jurisdiction, regardless of which Person such requirements shall, by their terms, be nominally imposed upon, and meeting standards sufficient to satisfy the applicable Manufacturer's requirements for warranty. Lessee will not permit any Unit to be used or operated in violation of any law, or of any rule, regulation or order of any governmental authority having jurisdiction, unless Lessee, or other appropriate Person, shall be contesting the validity thereof in good faith and by appropriate proceedings, but only so long as such proceedings shall not involve any risk of the sale, forfeiture or loss of the Unit in question or any Part or interest therein, and shall not result in, or involve any substantial possibility of resulting in, the creation of any Lien on or with respect to such Unit, Part or interest therein, which is not permitted under the provisions of Section 5 hereof. Lessee will maintain or cause to be maintained any records, logs and other materials required by, and will prepare and file any reports required by, any

governmental authority having jurisdiction to be maintained or filed in respect of any Unit regardless of which Person such requirements shall, by their terms, be nominally imposed upon. Lessee, at its own expense, will procure or cause to be procured and pay or cause to be paid for all permits, franchises, inspections and licenses necessary or appropriate in connection with each Unit, the use or operation thereof or any repair, restoration, replacement, renewal, addition or improvement with respect thereto.

8.1.1. No Obligation of Lessor. Lessor shall not be required to maintain, service or repair, or to make any repair, restoration, replacement, renewal, addition or improvement of any nature or description with respect to, any of the Units, or, except to the extent specifically provided herein, to incur any cost or expense in connection with this Lease. Lessee expressly waives to the extent not prohibited by law any right, power, privilege or remedy, now or hereafter conferred by statute or otherwise, to make at the expense of Lessor, or to cause Lessor to make, any repairs, restorations, replacements, renewals, additions or improvements with respect to the Units.

8.2. Permitted Uses. Lessee shall at no time during the Interim Term or the Applicable Term permit any Unit to be used in any activity (including, without limitation, any operation, use, maintenance or sublease) (i) outside the United States, Canada or Mexico, (ii) predominantly outside the United States (within the meaning of Section 48(a) of the Internal Revenue Code of 1954, as amended (the "Code")) or (iii) by a user that would disqualify the Units as Section 38 property under the Code.

8.3. Return of the Units on Expiration of Lease. Upon the expiration of the Applicable Term of this Lease Lessee will, at Lessee's own cost and expense, return and yield possession of the Units to Lessor unless Lessee is continuing to lease or purchasing such Units as provided in Section 18 or 19 hereof. At the time of its return, each Unit shall be free and clear of all Liens and rights of others (except Liens permitted by clauses (i) and (ii) of Section 5 hereof) and shall be in the condition and repair required to be maintained under Section 8.1 hereof. Lessee will, if so requested by Lessor, and at Lessee's own expense and risk, provide free storage (at not more than five storage locations in the contiguous 48 states of the United

States on premises acceptable to Lessor and designated by Lessor for all Units, subject to this Lease) of the Units for a number of days equal to the Applicable Storage Period following notification to Lessor by Lessee that at least 90% of the Units have been assembled and delivered for storage (and for each Unit not so assembled and delivered for storage, for a number of days equal to the Applicable Storage Period following notification to Lessor by Lessee that such Unit has been delivered for storage), and transport the same, at any time within the Applicable Storage Period, to any carrier for shipment, all as directed by Lessor and the storage of such Units to be at the expense and risk of Lessee (including the insurance required by Section 10 hereof during the Applicable Storage Period); and in the event that any Unit shall suffer an Event of Loss during such storage period, Lessee shall pay Lessor the Stipulated Loss Value thereof. During any such storage period, Lessee will permit Lessor or any Person designated by Lessor, including the authorized representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same at the expense of Lessor, provided however, that Lessee shall not be responsible for the cost of such inspection, nor shall Lessee bear any liability for any injury or liability incurred in the course of such inspection so long as such injury or liability is not the result of the Lessee's gross negligence or wilful misconduct. The assembling and storage of the Units as hereinbefore provided are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, Lessor shall be entitled to a decree against Lessee requiring specific performance thereof. Lessee shall pay to Lessor for each day from the date of expiration of this Lease until the Unit in question is assembled and delivered to storage as above provided an amount equal to 1/182 of the semi-annual Basic Rent applicable to each Unit not so assembled and delivered to storage. Without in any way limiting Lessee's obligations under this Section 8.3, Lessee hereby irrevocably authorizes Lessor, at and after any time Lessee shall be obligated to return possession of any Unit to Lessor, to exercise, in the name and on behalf of Lessee, any rights which Lessee may have to demand and take possession of such Unit from whosoever shall at the time be in possession of such Unit, and, in connection therewith, Lessee will supply Lessor with such documents as Lessor may reasonably request.

8.4. Certain Records. Lessee will permit Lessor, the Indenture Trustee, each Lender (so long as it or its nominees shall hold any Secured Note), and each subsequent institutional investor and their respective agents, accountants, independent contractors, experts and attorneys, upon reasonable notice and at their own expense, to examine the records of the Lessee relating to the Units (including car contract and subleases) and to take abstracts therefrom and to discuss the same with Lessee's officers and employees at reasonable times during business hours and as often as may reasonably be requested. In addition, Lessee will permit such Persons to inspect the Units, provided that no such inspection shall interfere in any material way with the rights of Lessee hereunder or with the rights of any sublessee under any sublease of the Units.

8.5. Report on Units. On or before May 1, in each year, commencing with the calendar year 1986, the Lessee will furnish to the Indenture Trustee and the Lessor an accurate statement setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder, the amount, description and numbers of all Units that have suffered an Event of Loss during the preceding calendar year or, in the case of the first such statement, since the date of this Lease (specifying the dates of such an Event of Loss) or to the knowledge of the Lessee are then undergoing repairs (other than running repairs) or are then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Indenture Trustee or the Lessor may reasonably request.

The Lessee agrees at its expense to prepare and deliver to the Lessor and the Indenture Trustee within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor or the Indenture Trustee) any and all reports (other than income tax returns) to be filed by the Indenture Trustee with any Federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units, the leasing thereof to the Lessee or the Lien thereon created by the Indenture.

8.6. Liens. Lessee will notify Lessor and the Indenture Trustee, promptly and in any event within 30 days after any Responsible Officer shall have become aware of the

same, of (i) any Lien (except Liens expressly permitted under Section 5 hereof) that shall have attached to any Unit and shall be continuing at the end of such 30-day period, (ii) the full particulars thereof and (iii) the action, if any, taken or proposed to be taken by Lessee in respect thereof.

8.7. Default Notice. Lessee will notify Lessor and the Indenture Trustee, promptly after (but not more than 10 days after) any Responsible Officer shall have become aware of the same, of (i) any event or condition which constitutes an Event of Default, or which, after the giving of notice or the passage of time, or both, would constitute an Event of Default, (ii) the full particulars thereof and (iii) the action, if any, taken or proposed to be taken by Lessee in respect thereof.

#### 9. REPLACEMENT OF PARTS: ALTERATIONS, MODIFICATIONS AND ADDITIONS.

9.1. Replacement of Parts. Lessee, at its own expense, will promptly replace or cause to be replaced all parts, instruments, appurtenances, accessories, furnishings and other equipment of whatever nature (herein, collectively called "Parts") which, originally or from time to time, have been incorporated in or installed as part of any Unit and which may from time to time become worn out, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use for any reason whatsoever. In the ordinary course of maintenance, service, repair, overhaul or testing, Lessee may remove any Parts; provided, however, that Lessee will forthwith replace such Parts. Each replacement Part shall be free and clear of all Liens and rights of others (other than any Liens permitted by Section 5 hereof) and shall be in as good operating condition as, and shall have a value and utility at least equal to that of, the replaced Part (assuming that such replaced Part shall have been in the condition in which such Part was required to be maintained by the terms hereof).

Each Part at any time removed from any Unit shall remain the property of (and title thereto shall remain in) Lessor, no matter where such Part shall be located at any particular time, until such time as such Part shall have been replaced by a Part incorporated in or installed as part of such Unit and meeting the requirements for a replacement.

Part specified in the preceding paragraph. At such time as any replacement Part shall become incorporated in or installed as part of such Unit as above provided, without further act or instrument, (i) title to such replacement Part shall thereupon vest in Lessor, (ii) such replacement Part shall become subject to this Lease and be deemed part of such Unit for all purposes hereof to the same extent as the removed Part, and (iii) title to the removed Part shall thereupon vest in Lessee or such other Person as shall be designated by Lessee, free and clear of all rights of Lessor.

9.2. Alterations Required by Law. Lessee, at its own expense, will make such alterations, modifications and additions of and to any Unit (collectively called "Required Alterations") as may be required from time to time to meet all material, valid and applicable requirements of law or of any governmental authority having jurisdiction (regardless of upon which Person such requirements shall, by their terms, be nominally imposed) other than such repairs as, in the reasonable judgement of Lessee, are determined to be not economically feasible (provided that in the event of such a determination Lessee shall promptly notify Lessor thereof and if within 20 days of receipt of such notice Lessor may opt to (i) waive the provisions of this Section 9.2 with respect to such requirement or (ii) commence making such repair at its own expense, in either of which events no Event of Loss with respect to such Unit shall be deemed to occur by reason of Lessor's decision that such repairs are not economically feasible), except where compliance therewith shall at the time be contested in good faith by appropriate proceedings which do not involve a risk of loss of use of the Unit in question. Title to all Parts consisting of Required Alterations shall, without further act or instrument, vest in Lessor.

9.3. Additions Owned by Others or Desired by Lessee. The term "Units" as used in this Lease shall not include any special devices, racks (including, but not limited to, automobile-carrying superstructures) or assemblies at any time attached to any Unit, the cost or purchase price of which is not included in the Purchase Price of the Units or the title to which is in a person other than the Lessor (all of which are hereinafter called "Property Owned by Others"). The Lessor and the Lessee recognize that such special devices, automobile-carrying

superstructures and other assemblies may be attached to the Units and may be owned and financed by persons other than the Lessor or the Lessee. The Lessor expressly acknowledges, for the purpose of assurance of any such persons and for the purpose of inducing attachment of such special devices, automobile-carrying superstructures and other assemblies to the Units, that the Lessor has no rights therein and that such persons may, at their own cost and expense, remove such special devices, automobile-carrying superstructures and other assemblies from the Units. The Lessee represents and warrants that it will, at the time of termination of this Lease (i) cause all Property Owned by Others to be removed from the Units, (ii) repair all damage, if any, caused by such removal, and (iii) after such removal, the value or utility of the Unit to which it was attached will not be diminished or impaired from what such value or utility would have been if such Property of Others had not been attached thereto. Lessee, at its own expense, may from time to time make such other alterations, modifications and additions of and to any Unit (collectively called "Voluntary Additions") as Lessee may deem desirable in the proper conduct of its business; provided, however, that no such Voluntary Addition shall either (i) cause the value, utility or condition of such Unit to be less or worse than the value, utility and condition thereof immediately prior to such Voluntary Addition, or (ii) reasonably be expected to cause the value, utility or condition of such Unit to be less or worse than the expected value, utility and condition thereof during or at the end of the Applicable Term, in each case assuming that such Unit shall at that time have been in the condition in which such Unit was required to be maintained by the terms of this Lease. Any such Voluntary Addition that is capable of being removed from such Unit without causing the value, utility or condition of such Unit to be less or worse than that of such Unit immediately prior to such Voluntary Addition (assuming that such Unit shall at that time have been in the condition in which such Unit was required to be maintained by the terms of this Lease) and, in any event, without causing material damage to such Unit, may be removed by Lessee prior to the expiration of the Applicable Term and is referred to herein as a "Removable Voluntary Addition". Lessee shall repair any damage to any Unit which is caused by the removal of a Removable Voluntary Addition. Any Removable Voluntary Addition shall, if not removed as provided in this Section 9.3 upon the expiration of the Applicable Term

become property of Lessor, but otherwise shall be property of Lessee. Any Voluntary Addition that is not a Removable Voluntary Addition shall become property of Lessor upon the installation thereof on the Unit.

9.4. General. Notwithstanding the foregoing, Lessee may not make any alterations, modifications or additions of or to any Unit if such alteration, modification or addition would impair the ability of Lessor to sell or lease such Unit at the end of the Applicable Term to a Person who is not an Affiliate of Lessee for use in such Person's trade or business.

10. INSURANCE. The Lessee shall at all times while this Lease is in effect maintain or cause to be maintained, at its own expense, property and casualty insurance with financially sound and reputable insurers in respect of the Units at the time subject hereto, at least in amounts and against risks customarily insured against by railroad companies on similar equipment owned, leased or otherwise used by them and in amounts and against risks customarily insured against by the Lessee on similar equipment owned, leased or otherwise used by it.

The Lessee will, at all times prior to the end of the Applicable Storage Period, at its own expense, cause to be carried and maintained public liability insurance with financially sound and reputable insurers in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned, leased or otherwise used by it.

Lessee will, and every policy or certificate of insurance required to be maintained or furnished by Lessee under this Section 10 shall (i) name the Lessor and Indenture Trustee as additional insureds, as their interests may appear and (ii) provide that neither Lessor nor the Indenture Trustee shall have any liability for premiums. Lessee shall provide to Lessor and Indenture Trustee such evidence of the insurance required by this Section 10 as Lessor or Indenture Trustee may reasonably request from time to time. In the event that Lessee shall fail to maintain insurance as herein provided, Lessor or the Indenture Trustee may, at its option, maintain such insurance, and, in such event, Lessee will reimburse Lessor or the Indenture



Trustee, as the case may be, upon demand for the cost thereof as Supplemental Rent.

11. LOSS, DESTRUCTION OR DAMAGE.

11.1. Payment of Stipulated Loss Value Upon an Event of Loss. If an Event of Loss with respect to any Unit shall occur, Lessee will give Lessor and the Indenture Trustee written notice thereof within 60 days after the Lessee obtains knowledge thereof and will pay the Stipulated Loss Value for such Unit in immediately available funds (computed as of the day such payment shall be made) to Lessor on the Lease Payment Date immediately succeeding the date such notice is given (together with Rent due on such date with respect to such Unit). Upon the making of such Interim Rent or Basic Rent payment and such Stipulated Loss Value payment by Lessee in respect of any Unit, the Rent for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering an Event of Loss or any component thereof, before or after the expiration of this Lease, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Stipulated Loss Value to the Indenture Trustee or the Lessor and is not in default hereunder or an event which after notice or lapse of time or both would become a default hereunder has not occurred and is continuing, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Stipulated Loss Value of such Unit, and shall pay any excess to the Lessor less the reasonable expenses of the Lessee in carrying out such disposition.

11.2. Application of Insurance Proceeds and Other Payment Upon an Event of Loss. Any payments received at any time by Lessor or Lessee from any insurance carrier providing insurance on the Units required to be maintained by Section 10 hereof or other payment received from another Person as a result of or with respect to periods after the occurrence of an Event of Loss with respect to any Unit (other than payment referred to in Section 11.1 hereof) shall be applied as follows:

(i) all such payments received at any time by Lessee shall be promptly paid to the Indenture Trustee

for application pursuant to the following provisions of this Section 11.2; and

(ii) so much of such payments as shall not exceed the Stipulated Loss Value of such Unit plus the Interim Rent or Basic Rent, as the case may be, with respect to such Unit applicable to the period from the date of such Event of Loss to but not including the date on which such Stipulated Loss Value was, or is required to be, paid by Lessee pursuant to Section 11.1 hereof shall be applied in reduction of Lessee's obligation to pay such amount, if not already paid by Lessee, or if already paid by Lessee, shall be applied to reimburse Lessee for its payment of such amount, unless an Event of Default (or any event or condition which, after the giving of notice or passage of time, or both, would constitute an Event of Default) shall have occurred and be continuing (in which event, such payments shall be applied against Lessee's obligations under this Lease); and

(iii) the balance of any proceeds of insurance which was paid for by Lessee shall, unless an Event of Default (or any event or condition which, after the giving of notice or passage of time, or both, would constitute an Event of Default) shall have occurred and be continuing (in which event, such payments shall be applied against Lessee's obligations under this Lease), be paid to Lessee, and the balance of any proceeds of insurance which was paid for by Lessor shall be paid to Lessor.

11.3. Other Payments. Any amount payable to Lessor hereunder (other than Excluded Amounts) which is not otherwise applied pursuant to the foregoing provisions of this Article 11 shall be applied by Lessor to Lessee's obligations under the Lease.

## 12. GENERAL INDEMNITY FOR TAXES

12.1. Indemnification. (a) All payments by the Lessee in connection with the transactions contemplated by the Operative Documents shall be free of withholdings of any nature whatsoever (and at the time that the Lessee is required to make any payment upon which any withholding is required, the Lessee shall pay an additional amount such that the net amount actually received by the person entitled

to receive such payment will, after such withholding, equal the full amount of the payment then due) and shall be free of expense to Lessor, the Indenture Trustee, or any Holder, and their respective successors and assigns (the "Indemnitees") for collection or other charges. Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay and assume liability for, and does hereby indemnify, protect, defend and hold harmless on an After-Tax Basis each Indemnatee from and against any and all taxes (including, without limitation, gross receipts, sales, use, property, income, franchise, capital, occupational, license, value added, excise and stamp taxes), assessments, fees (including, without limitation, documentation, license, filing and registration fees) and charges, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon such Indemnatee, the Lessee or the Equipment or any portion thereof by any authority having or asserted to have jurisdiction to tax, upon or with respect to, the Equipment or any portion thereof; the manufacture, financing, construction, acceptance, rejection, transfer, control, operation, condition, servicing, maintenance, repair, abandonment, replacement, purchase, sale, ownership, delivery, nondelivery, leasing, subleasing, insuring, possession, use, improvement, transfer of title, return or other disposition thereof; the indebtedness with respect thereto; the rentals, receipts or earnings arising therefrom; or the Operative Documents or any payment made pursuant thereto; the income or other proceeds received with respect to the Equipment or any portion thereof upon the disposition thereof; any contract relating to the manufacture, construction, acquisition or delivery of the Equipment, in each case as supplemented or amended; or otherwise in connection with the transactions contemplated by the Operative Documents (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid, whether now existing or hereafter enacted or adopted, being hereafter called "Taxes").

(b) The indemnity in Section 12.1(a) shall not apply to (i) Taxes based on or measured by the income, net income, capital assets or property of such Indemnatee by the United States or any jurisdiction in which such Indemnatee is incorporated or has its principal place of business, (ii) Taxes to the extent imposed with respect to periods

commencing after the earlier of the expiration or termination of the Lease or the placement in storage of the Equipment at the request of the Lessor pursuant to Section 8.3 of the Lease, provided that the Indemnatee is not precluded from transferring the Equipment or any portion thereof because of any litigation that involves the Lessee as a party, or that arose by reason of an act or failure to act by Lessee; (iii) any Taxes that are imposed on any Indemnatee by a reason of a sale or other disposition of the Equipment or any portion thereof (other than a transfer of the Equipment in the connection with the exercise of the Owner's remedies under Section 15 of the Lease or the exercise of remedies under the Indenture following an Event of Default), (iv) Taxes upon or with respect to fees paid to the Indenture Trustee measured by the compensation of such Trustee, (v) any state, local or foreign Taxes on or measured by the income, net income, capital assets, or property of any Indemnatee imposed by jurisdictions other than those referred to in clause (i) above, unless such Indemnatee became subject to the payment of such taxes because any Equipment was located in such jurisdiction, because the transactions contemplated by the Operative Documents had a significant nexus with such jurisdiction or because the Lessee or any person in possession of the Equipment had a nexus with such jurisdiction; and (vi) any Taxes resulting from the sale or use of the Equipment to the extent that such taxes are included in the Purchase Price of such Equipment.

12.2. Reports and Returns. In case any report or return is required to be made with respect to any Taxes imposed on an Indemnatee as a result of its participation in the transactions contemplated hereby (whether or not indemnified hereunder), the Lessee shall timely notify the Indemnatee of such requirement and either, at the election of the Lessor, (i) timely make and file such report or return in such manner as will show the interests of the Indemnatee in the Equipment, or (ii) timely provide all information to the Indemnatee that is necessary for the filing of such return or report by the Indemnatee (for purposes of this clause the Lessee's obligation timely to provide the Indemnatee with such information shall mean a sufficient amount of time to allow a reasonable return or report preparer to timely prepare and file such return or report). All costs and expenses (including legal and accountants' fees) of preparing any such return or report

shall be borne by the Lessee, and the Lessee shall hold each Indemnatee harmless from and against any liabilities, obligations, losses, damages, penalties, additions to tax, interest, claims, actions, suits, and reasonable costs arising out of any insufficiency, failure to file, or inaccuracy with respect to any such return or report that is subject to the provisions of this Section 12.2. A failure of the Lessee to comply with the provisions of this Section 12.2, except a failure of the Lessee to pay any amounts required by the second sentence of this Section 12.2, shall not constitute an Event of Default under the Lease.

12.3. Payments and Repayments. All Taxes shall be paid when due and payable, and all amounts payable as indemnities pursuant to this Section 12 shall be payable to the extent not theretofore paid, on written demand by the appropriate Indemnatee unless such Tax is contested in accordance with Section 12.4 hereof, in which event such Tax shall be payable at the time provided in such Section. If, pursuant to the first sentence of Section 12.1 hereof, the Lessee has withheld any amount from any payment in respect of any withholding tax with respect to a Tax excluded from the Indemnity by Section 12.1(b) and the Lessee has paid over such withheld amount to the proper taxing authority for the account of such Indemnatee, the Lessee shall notify such Indemnatee of the amount of such withholding and provide to such Indemnatee a receipt or other documentation evidencing payment of the withheld amount. The Lessee will use its best efforts to obtain official receipts indicating the payment of all foreign Taxes that are subject to indemnification under this Section 12 and shall promptly send to the Indemnatee each such receipt obtained by the Lessee. Upon receipt of the notice together with documentation evidencing payment described in the preceding sentence, such Indemnatee shall promptly repay to the Lessee the amount withheld.

12.4. Contests; Etc.

(a) Duty to Contest. If any proceeding (including without limitation a written claim or written threat of such proceeding) or demand for payment is commenced or made against an Indemnatee for any Taxes, such Indemnatee shall promptly notify the Lessee. If the Lessee is able to contest such proceeding or demand in its own name, the Indemnatee will agree to permit the Lessee to do so and the

Lessee shall do so if the Indemnatee so requests, provided the Indemnatee determines in its sole discretion exercised in good faith that it will not be prejudiced in respect of the contest or payment of any taxes or other amounts that are not covered by an indemnity of the Lessee.

(b) Control of Contest. If the Lessee is not able to contest such proceeding or demand in its own name or if, pursuant to the preceding paragraph, the Indemnatee does not permit the Lessee to conduct such contest, the Indemnatee will contest such proceeding or demand in good faith (including appealing any adverse determination by a court to a higher court, provided that (i) such higher court has jurisdiction to consider the appeal, and (ii) the provisions of Section 12.4(c)(ii) are satisfied), with due diligence but under its sole control. If the Indemnatee determines in its sole discretion exercised in good faith that it cannot be prejudiced with respect to any taxes or other amounts that are not covered by an indemnity of the Lessee, the Indemnatee will take such action in connection with contesting any such proceeding or demand as the Lessee shall reasonably request, including appealing any adverse determination by a court to a higher court, provided that (i) such higher court has jurisdiction to consider the appeal, and (ii) the provisions of Section 12.4(c)(ii) are satisfied.

(c) Conditions of Contest. Notwithstanding the foregoing, no contest will be required pursuant to this Section 12 and the Lessee shall be required to pay any such Taxes without contest unless:

(i) within 30 days after notice by the Indemnatee to the Lessee of such proceeding or demand the Lessee shall request that it be contested;

(ii) prior to the Indemnatee taking any such requested action, including an appeal, the Lessee (at its expense and upon the written request of the Indemnatee) shall provide the Indemnatee in a timely manner with an opinion of independent tax counsel of recognized standing selected by the Lessee and approved by the Indemnatee, which approval will not be withheld unreasonably, to the effect that there exists a reasonable basis for contesting such Taxes or appealing a decision;

(iii) if such contest shall involve payment of the Taxes, the Lessee shall either (a) lend to such Indemnatee on an interest-free basis the amount thereof plus the amount of any reserves the Indemnatee may be required to establish under applicable banking laws as a result of such loan (as increased hereby), which loan shall be payable in full by the Indemnatee upon the conclusion of the contest (an "Advance"), or (b) pay such Indemnatee the amount payable by the Lessee pursuant to Section 12.3 hereof with respect to such Taxes; in the event any Taxing Authority shall take the position that the amount of the Advance is included in the gross income of the Indemnatee in any taxable year prior to final determination of the contest, the Lessee, within 30 days of written notice thereof by the Indemnatee, shall pay to the Indemnatee on an After-Tax Basis an amount equal to the aggregate additional Federal, state, and local income taxes payable by the Indemnatee with respect to such taxable year as a result of such inclusion (unless and to the extent items with respect to which the Advance is made are fully and currently deductible); and

(iv) the Lessor, the Holders and the other Indemnitees shall determine that the actions to be taken will not result in a material risk of the sale, forfeiture or other loss of the Equipment or any portion thereof, or any other property owned, held or used by the Indemnatee.

The Lessee agrees to be incontestably bound by the results of a final determination of any contest pursuant to this Section 12.4. In addition, the Lessee agrees that it is incontestably obligated to pay the Indemnatee in respect of any Taxes that the Indemnatee actually pays unless (A) such taxes are excluded from the Indemnity of this Section 12, (B) the Indemnatee waives such indemnity pursuant to Section 12.8 hereof.

(d) Costs of Contest. The Lessee shall indemnify the Indemnatee for all reasonable out-of-pocket expenses that the Indemnatee may incur from time to time as a result of participating in any proceeding described in Section 12.4 hereof (or any appeal thereof), including, without limitation, reasonable attorneys', accountants' and experts' fees and disbursements, and the amount of any interest, addition to tax or penalty imposed merely as a result of contesting such Taxes.

(e) End of Contest. To the extent the contest determines that any Tax that is the subject of the contest is not owing and (a) Lessee has paid the indemnity set forth in Section 12.4(c)(iii)(b), or has paid an Advance that was included in the Indemnatee's gross income, the Indemnatee shall pay Lessee the sum of (i) the amount of such Tax that was held not to be due net of any taxes payable by reason of the inclusion of any refund of tax in gross income, plus (ii) any interest received by the Indemnatee from the Taxing Authority, plus any Taxes saved by the Indemnatee by reason of the deduction of the amounts payable in this clause (a), or (b) Lessee has made an Advance that was not included in gross income, the Indemnatee shall pay Lessee an amount equal to the sum of (i) any interest received by the Indemnatee from the Taxing Authority net of any Taxes payable by reason of the inclusion of the interest in gross income, plus (ii) any Taxes saved by reason of the deduction of the amounts payable in this clause (b). To the extent that the contest determines that any Tax that is the subject of the contest is owing and Lessee has not theretofore paid the indemnity set forth in Section 12.4(c)(iii)(b), Lessee shall pay that amount not later than 10 days after the date the decision becomes final; to the extent that the Lessee has made an Advance, that Advance shall be repaid 10 days after the date the decision becomes final; the Indemnatee's repayment of the Advance and any indemnity payment by Lessee may be offset against one another and only the net amount paid; provided, however, that such amount shall in no event be payable before such time as the Lessee shall have made all payments and indemnities then due under the Operative Documents to such Indemnatee; provided, further, however, that the aggregate amount of all payments with respect to any Taxes by such Indemnatee pursuant to this sentence shall not exceed the aggregate amount of all payments made by Lessee pursuant to Section 12.1(a) hereof with respect to such Taxes.

12.5. Lessee a Primary Obligor, Etc. The Lessee's obligations under the indemnities provided for in this Agreement shall be those of a primary obligor whether or not the Indemnatee shall also be indemnified with respect to the same matter under the terms of any other Operative Document or any other document or instrument, and the Person seeking indemnification from the Lessee pursuant to any provision of this Agreement may proceed directly against the Lessee without first seeking to enforce any other right of



indemnification. All amounts of indemnities payable by the Lessee pursuant to this Section 12 shall be treated as obligations of the Lessee under the Lease and shall constitute Supplemental Rent under the Lease; provided, however, that all such amounts shall be payable directly to the Indemnatee entitled thereto.

12.6. Payments on After-Tax Basis. The Lessor and Lessee agree that, with respect to any payment or indemnity required to be made pursuant to this Section 12 hereunder, shall be made as follows. Any payment or indemnity that the Lessee is obligated to make to any Indemnatee pursuant to this Section 12 shall be made on an After-Tax Basis (unless and to the extent the item with respect to which the indemnity is made is fully and currently deductible), which assumes that the Indemnatee is taxable at the highest marginal statutory rate in effect for the relevant period. Any payment the Indemnatee is obligated to make to the Lessee pursuant to this Section 12 shall include any Taxes saved by the Indemnatee by reason of such payment, with the amount of Taxes saved by the Indemnatee based on the assumption that the Indemnatee is taxable at the highest marginal statutory rate in effect for the relevant period. To the extent that any Indemnatee realizes a tax savings by reason of the Lessee making payment of a Tax with respect to which Lessee made an indemnification payment pursuant to this Section 12 and, all or some portion of such tax savings is deductible, in whole or in part, in a taxable year of the Indemnatee other than the year in which such payment or indemnity was includable in the income of the Indemnatee, whether before or after expiration of the Applicable Term, then the Indemnatee shall pay to the Lessee the amount of such tax savings based on the assumption that the Indemnatee is taxable at the highest marginal statutory rate in effect for the relevant period; provided, however, that such tax savings shall be payable at the time that the Indemnatee files a return that claims such savings.

12.7. Waiver of Indemnification. Notwithstanding anything to the contrary contained in this Section 12, the Indemnatee may at any time decline to take any action or any further action with respect to any Taxes and may in its sole discretion settle or compromise any such proceeding, claim or demand for Taxes; provided, however, in that event, if the Lessee has fulfilled its obligations under Section 12.4 hereof and has failed to consent to such settlement or

compromise, the Indemnatee shall waive its right to any indemnity payment by the Lessee pursuant to this Section 12 in respect of such proceeding, claim or demand and shall promptly repay to the Lessee any Advance and any amount paid to such Indemnatee under Sections 12.3 and 12.4(c)(iii) hereof in respect of such Taxes. Any election by an Indemnatee not to contest a proposed adjustment or claim for refund for any given taxable period shall not affect the rights and obligations of such Indemnatee and the Lessee hereunder in respect of any other taxable period or any other Taxing Authority unless such election by the Indemnatee with respect to any issue shall materially adversely affect the liability of the Indemnatee in regard to such issue in respect of any other taxable period or any other Taxing Authority. Each Indemnatee shall cooperate in good faith with the Lessee to reduce the amount of any Taxes, provided that such cooperation shall not require any action which in the good faith judgment of such Indemnatee may adversely affect the interest of the Indemnatee in the Items or otherwise adversely affect the business of such Indemnatee.

12.8. Interest. Interest at a rate per annum equal to the greater of 11.3% or 1% above the Prime Rate as in effect from time to time shall be payable on any amount not paid when due under this Section 12 until such amount shall be paid.

12.9. Survival. All indemnities, obligations, adjustments, and payments provided for in this Section 12 shall survive, and remain in full force and effect, notwithstanding the expiration or other termination of this Agreement, the Lease, or any other Operative Document. The obligations of the Lessee in respect of all such indemnities, obligations, adjustments, and payments are expressly made for the benefit of, and shall be enforceable by, the Indemnatee entitled thereto, at the option of such Indemnatee without declaring the Lease to be in default or taking other action thereunder.

### 13. INDEMNIFICATION AND EXPENSES.

13.1. General Indemnity. Whether or not any of the transactions contemplated hereby shall be consummated, Lessee hereby assumes liability for, and agrees to

indemnify, protect, save and keep harmless Lessor, the Indenture Trustee, the Trust Estate and each Holder and their respective successors, assigns, agents and servants, and any of them (herein individually called an "Indemnified Party") from and against, any and all liabilities, obligations, losses, damages, penalties, claims, causes of actions, suits, demands, judgments, costs, charges, fees, expenses and disbursements (including reasonable legal fees and expenses), of whatsoever kind and nature (herein collectively called "Expenses"), imposed on, asserted against or incurred or suffered by any Indemnified Party in any way relating to or arising out of the Operative Documents, the construction, manufacture, installation, purchase, acceptance, non-acceptance, rejection, ownership, delivery, non-delivery, lease, possession, use, occupancy, transportation, operation, insurance, condition, return, sale, exchange or other disposition of or in respect of the Units, or any portion thereof or interest therein, including, without limitation, latent and other defects, whether or not discoverable by any Indemnified Party, expenses to any Indemnified Party resulting from the failure to make any payment of Rent at the time or in funds required under this Lease, any claim for patent, trademark or copyright infringement, any claim arising under the strict liability doctrine in tort or any claim arising from (i) injury to persons or property growing out of or in connection with the ownership or use of the Units, or any portion thereof or interest therein, or resulting from the condition of any thereof, or (ii) violation or breach by Lessee of any representation, warranty, agreement or condition contained in this Lease or any other Operative Document (except the Indemnity Agreement) or of conditions, agreements, laws regulations, requirements and rules affecting or relating to the Units, or any portion thereof or interest therein; provided, however, that Lessee shall not be required to indemnify any Indemnified Party against (A) any Expenses incurred by any Indemnified Party attributable to (i) its willful misconduct or (ii) its gross negligence, (B) Expenses described in Section 12 hereof (except to the extent that indemnification is provided for in said Section 12), (C) Expenses referred to in Section 10 of the Participation Agreement (except to the extent otherwise provided in said Section 10), (D) in the case of Lessor, Expenses described in the Indemnity Agreement (except to the extent otherwise provided in the Indemnity Agreement), (E) Lessor's obligations with respect to the Secured Notes, (F)

except as otherwise specifically provided in this Lease, or unless an Event of Default shall have occurred and be continuing under this Lease, the Purchase Price of the Units and Expenses relating to or arising out of the disposition of any Unit by Lessor after possession of such Unit shall have been surrendered to Lessor at the end of the Applicable Term, except for Expenses otherwise fairly attributable to any failure by Lessee fully to perform and observe any of its covenants, agreements or obligations hereunder, and (G) except as otherwise specifically provided for in this Lease, Expenses for any period after the surrender of a Unit to Lessor at the end of the Applicable Term, except for Expenses otherwise fairly attributable to any failure by Lessee fully to perform and observe any of its covenants, agreements or obligations hereunder. If Lessee shall have knowledge of any Expense hereby indemnified against, it will give prompt written notice thereof to each concerned Indemnified Party.

13.2. Indemnity for Certain Specific Costs and Expenses. Without in any way limiting the provisions of Sections 12 or 13.1 hereof, except as otherwise expressly provided in Section 10 of the Participation Agreement, Lessee will pay, or cause to be paid (A) the fees, expenses and disbursements of the Indenture Trustee, including, without limitation, the annual fee payable to the Indenture Trustee, with respect to the administration of the Indenture and the Trust Estate referred to in the Indenture and (B) all costs and expenses (including legal fees) incurred by Lessor or any Lender or other holder of a Secured Note in connection with (x) the preparation of, and the entering into, giving or withholding of, any certificate, amendment, supplement, waiver or consent with respect to this Lease, the Indemnity Agreement, the Participation Agreement or the Purchase Order Assignments, whether or not any of the transactions contemplated thereby shall be consummated, and (y) any Event of Loss and Event of Default (or any event or condition which, after the giving of notice or the passage of time, or both, would constitute an Event of Default).

13.3. Payments and Other Provisions. All amounts payable by Lessee pursuant to this Section 13 shall be payable directly to, or for the benefit of, the Indemnified Party. Lessee shall be obligated under this Section 13 as primary obligor whether or not any Indemnified Party shall also be indemnified with respect to the same matter under

any other agreement by any other Person. Any Indemnified Party seeking to enforce the indemnification may proceed directly against Lessee under this Section 13 without first resorting to any such other rights of indemnification. If any action, suit or proceeding shall be brought against any Indemnified Party in connection with any claim indemnified against under Section 13.1 hereof, Lessee may (and, upon such Indemnified Party's request, will), at Lessee's own expense, resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by Lessee and reasonably approved by such Indemnified Party, and, in the event of any failure by Lessee to do so, Lessee will pay all costs and expenses (including, without limitation, legal fees and expenses) incurred by such Indemnified Party in connection with such action, suit or proceeding; provided, however, that if for any reason any Indemnified Party reasonably concludes after notice to Lessee that the defense being provided by Lessee is not satisfactory, such Indemnified Party shall have the right to designate counsel reasonably satisfactory to Lessee to replace such counsel selected by Lessee and to control such action, suit or proceeding at Lessee's expense. In the event that Lessee shall be required to make any payment under this Section 13, the amount payable shall be paid on an After-tax Basis. Upon the payment in full of any indemnities under this Section 13 by Lessee, and provided that no Event of Default (or any event or condition which, after the giving of notice or the passage of time, or both, would constitute an Event of Default) shall have occurred and be continuing, Lessee shall be subrogated to any right of such Indemnified Party in respect of the matter against which indemnity shall have been given. Any payment received by any Indemnified Party from any person (except Lessee) as a result of any matter with respect to which such Indemnified Party is indemnified by Lessee under this Section 13 shall be paid over to Lessee to the extent necessary to reimburse Lessee for indemnification payments previously made unless an Event of Default (or event which with notice or lapse of time or both would constitute an Event of Default) has occurred and is continuing (in which event such amount shall be applied against Lessee's obligations under the Lease).

13.4. Survival. The indemnities contained in this Section 13 shall survive the sale or transfer of the Secured Notes, the resignation or removal of any particular person

as trustee under the Indenture, and the termination or expiration of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such sale, transfer, resignation, removal, termination or expiration, and, without limiting the generality of Section 22.5 hereof, said indemnities are made expressly for the benefit of, and shall be enforceable by, any Indemnified Party.

14. Events of Default. Each of the following events or conditions shall constitute an Event of Default (whether or not any such event or condition shall be voluntary or involuntary, or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any governmental authority);

14.1. Lessee shall fail to make any payment of Interim Rent or Basic Rent when due and such failure shall continue for 10 days; or

14.2. Lessee shall fail to make any payment of Supplemental Rent (including, without limitation, any payment of Stipulated Loss Value) when due and such failure shall continue for 10 days after notice from Lessor; or

14.3. Lessee shall fail to make any payment required to be made by it pursuant to the Indemnity Agreement when due and such failure shall continue for 10 days after notice of such failure from Lessor; or

14.4. Lessee shall fail to maintain the insurance required to be maintained under Section 10 hereof and such failure shall be continuing for 15 days after Lessee shall have actual knowledge of such failure or shall have been notified thereof by the Indenture Trustee or Lessor or Lessee shall fail to perform or observe any of the conditions or agreements in Section 5 to be performed or observed by Lessee; or

14.5. Lessee shall fail to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder or under the Participation Agreement or any of the other Operative Documents (other than in the Indemnity Agreement) and such failure shall continue unremedied by Lessee for 30 days after notice from

Lessor, the Indenture Trustee or any Lender (so long as it shall hold any of the Secured Notes) to Lessee demanding the same to be remedied; or

14.6. Any representation or warranty made by Lessee herein or in the Participation Agreement or any other of the Operative Documents (other than in the Indemnity Agreement) or in any instrument, certificate or other document furnished Lessor, the Indenture Trustee or any Lender on or prior to the second Closing Date in connection herewith or therewith, or pursuant hereto or thereto, shall have been incorrect or misleading in any material respect when made or, if furnished after such second Closing Date, any such representations or warranties shall not have been corrected in a subsequent instrument, certificate or other document furnished to the Lessor, the Indenture Trustee and the Lenders within 30 days after the earlier of receipt by the Lessee of actual knowledge or notice thereof; or

14.7. Lessee shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property, (ii) be generally unable to pay its debts as such debts become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law providing for the relief of debtors, (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under such Bankruptcy Code or (vii) take any corporate action for the purpose of effecting any of the foregoing; or

14.8. A proceeding or case shall be commenced, without the application or consent of Lessee, in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution, winding up, or composition or readjustment of debts of Lessee, (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of Lessee or of all or any substantial part of its assets or (iii) similar relief in respect of Lessee under any law providing for the relief of debtors, and such proceeding or case shall continue undismissed, or unstayed and in effect for a period of 60 days; or an order for relief against

Lessee shall be entered in an involuntary case under such Bankruptcy Code.

15. REMEDIES AFTER DEFAULT.

15.1. Remedies. Upon the occurrence of any Event of Default and at any time thereafter so long as the same shall be continuing, Lessor, at Lessor's option may declare this Lease to be in default, and at any time after such declaration, so long as all outstanding Events of Default shall not have been cured, Lessor, at Lessor's option, may exercise any one or more of the following rights, powers, privileges or remedies as Lessor in Lessor's sole discretion shall elect, and to the extent not prohibited by, and subject to compliance with any mandatory requirements of, applicable law then in effect:

15.1.1. By notice in writing to Lessee terminate all rights of Lessee to the use and possession of the Units or any part thereof under this Lease, including Lessee's rights under Sections 18 and 19 hereof (but Lessee shall remain liable for its obligations contained in this Lease) and Lessor, at Lessor's option may (and Lessor is hereby granted, or Lessee will cause to be granted to Lessor, an express right to) take immediate possession of the Units and remove all or any portion of the Units by summary proceedings or otherwise, all without incurring any liability to Lessee (or to any Person claiming by, through or under Lessee), for or by reason of such entry or taking of possession whether for the restoration of damage to property caused by such entry or taking of possession or otherwise (any and all such liability being waived, to the extent that Lessee may effectively do so);

15.1.2. By notice in writing to Lessee require Lessee to return possession of the Units promptly to Lessor in the manner and condition required by, and otherwise in accordance with, the provisions of Section 8.3 hereof, as if possession of the Units were being returned at the end of the Applicable Term (except that the Lessor may reasonably designate the return location which shall be a place where Units are then being sold or leased in reasonable commercial quantities) and upon the further demand of Lessor require Lessee to transport



the Units to a carrier for shipment in accordance with the provisions of Section 8.3 hereof;

15.1.3. Hold, keep idle or lease (but in the event of a lease, upon not less than 20 days' prior written notice by Lessor to Lessee which notice Lessor and Lessee hereby agree to be reasonable) to others the Units or any portion thereof, as Lessor in Lessor's sole discretion may determine, free and clear of any rights of Lessee (or any Person claiming by, through or under Lessee) and without any duty to account to Lessee with respect to such action or inaction or for any proceeds with respect thereto, except Lessee's obligation to pay Interim Rent and Basic Rent for the period commencing after Lessee shall have been deprived of possession pursuant to Section 15.1.2 hereof shall be reduced by the net proceeds, if any, received by Lessor from Leasing the Units or any portion thereof, to any Person other than Lessee for such period or any portion thereof;

15.1.4. Exercise any other right, power, privilege or remedy which may be available to Lessor under applicable law, including rights under the Uniform Commercial Code (including the right to sell the Units) or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof or to rescind this Lease.

15.2. Damages. After Lessor has declared this Lease to be in default as provided in Section 15.1 hereof and so long as all outstanding Events of Default shall not have been cured, Lessor, by notice to Lessee specifying a payment date which shall be not earlier than ten days after the date of such notice, may require Lessee to pay to Lessor on the payment date specified in such notice, as liquidated damages for loss of the benefit of the bargain, and not as a penalty (in lieu of Interim Rent and Basic Rent due for periods after the payment date specified in such notice) any unpaid Interim Rent, Basic Rent and Supplemental Rent due for periods up to and including the payment date specified in such notice plus an amount equal to the excess, if any, of the Stipulated Loss Value of the Units as of the payment date specified in such notice over the Fair Market Sales Value of the Units as of the payment date specified in such notice (together with interest on such amounts at the

Default Rate from such payment date to the date of actual payment); provided, however, if the Lessor shall sell the Units, the Fair Market Sales Value of the Units sold shall conclusively be deemed to be the net proceeds, after expenses, realized upon such sale. If the Units are not returned as required hereby the Fair Market Sales Value of the Units not so returned shall be deemed to be zero.

15.3. Other Amounts Payable. Lessee shall be liable, except as otherwise provided above, for any and all unpaid Rent due hereunder before or during the exercise of any of the rights, powers, privileges or remedies provided for hereunder and for all legal fees and other costs and expenses incurred by Lessor, the Indenture Trustee or any Holder by reason of the occurrence of any Event of Default or the exercise of any of Lessor's rights, powers, privileges or remedies with respect thereto, including the cost of any leasing of the Units pursuant to Section 15.1.3 hereof to the extent in excess of the rental therefrom, the cost of any sale made pursuant to the provisions of Section 15.1.4 hereof, and all costs and expenses incurred in connection with the surrender of the Units in accordance with Section 15.1.2 hereof or the placing of the Units in the condition required hereby, together, in each case, with interest thereon at the Default Rate.

15.4. Application of Proceeds. The proceeds of any sale made pursuant to the provisions of Section 15.1.4 hereunder shall be applied as follows:

FIRST, to the payment of any legal fees, costs and expenses provided for in Section 15.3 hereof;

SECOND, any proceeds then remaining shall be applied to the payment of any unpaid Interim Rent, Basic Rent and Supplemental Rent due for periods up to and including the Lease Payment Date next succeeding the date of such sale, plus an amount equal to any unpaid portion of the Stipulated Loss Value of the Units as of such Lease Payment Date (together with interest on such amounts at the Default Rate from such Lease Payment Date to the date of actual payment);

THIRD, any proceeds then remaining shall be applied to the payment of any other unpaid obligations of Lessee

hereunder including, without limitation, any unpaid Supplemental Rent;

FOURTH, any proceeds then remaining shall be applied to the payment of damages provided for in Section 15.2 hereof; and

FIFTH, any proceeds then remaining shall be paid to Lessor.

15.5. Miscellaneous. The following additional provisions shall apply upon the exercise of remedies after an Event of Default:

15.5.1. Determination of Value. Unless a sale by Lessor has previously occurred pursuant to the provisions of Section 15.1.4 hereof, in which case the net proceeds of such sale shall be conclusively deemed to be the Fair Market Sales Value, for the purposes of Section 15.2 hereof, the Fair Market Sales Value of the Units shall be determined by mutual written agreement of Lessor and Lessee or, upon request by Lessor at any time prior to such mutual agreement, by the Appraisal Procedure, the costs of which shall be borne by Lessee.

15.5.2. Purchase at Sale. Subject to the provisions of any applicable law, at any sale pursuant to this Section 15, Lessor, the Indenture Trustee, any Holder, or any affiliate or subsidiary of Lessor, the Indenture Trustee or any Holder, may bid for and purchase any or all of the Units.

15.5.3. No Waiver. No express waiver nor, without limiting the generality of Section 22.2 hereof, any implied waiver, by Lessor of any Event of Default shall in any way be, or be construed to be, a waiver of any other Event of Default. The failure of Lessor to insist upon the strict performance of any provision, or to exercise any right, power, privilege or remedy contained or referred to in this Lease, shall not be construed as a waiver or a relinquishment thereof for the future. Receipt by Lessor of any Rent payable hereunder with knowledge of the breach of any provision contained in this Lease shall not constitute a waiver of such breach.

15.5.4. Remedies Cumulative. No right, power, privilege or remedy herein conferred upon or reserved to Lessor or otherwise referred to is intended to be exclusive of any other right, power, privilege or remedy, and every right, power, privilege and remedy shall be cumulative and concurrent and in addition to any other legal or equitable right, power, privilege and remedy conferred or reserved hereunder or now or hereafter existing in law or in equity, and the exercise or beginning of exercise by Lessor of any one or more of such rights, powers, privileges or remedies shall not preclude the simultaneous or later exercise by Lessor of any or all of such other rights, powers, privileges or remedies. To the extent that it may effectively do so, Lessee hereby waives and releases any rights, powers, privileges, immunities or remedies now or hereafter conferred by statute or otherwise which may require Lessor to sell, lease or otherwise use the units in mitigation of Lessor's damages as set forth in this Section 15, or which may otherwise limit or modify any of Lessor's rights, powers, privileges or remedies under this Section 15, or delay or hinder the exercise thereof by Lessor.

15.5.5. Injunctive Relief. Lessor shall be entitled to injunctive relief in case of the violation, or attempted or threatened violation, of any provision of this Lease, and to a decree compelling observance or specific performance of each provision of this Lease, and to any other legal or equitable remedy.

16. PERMITTED CONTESTS. If no Event of Default (or other event or condition which, after the giving of notice or the passage of time, or both, would constitute an Event of Default) shall have occurred and be continuing, Lessee need not pay, discharge or remove any tax, charge, levy, assessment or Lien or any other imposition on or against the Units or any portion thereof or interest therein, so long as Lessee, or other appropriate person, shall be contesting the existence, amount or validity thereof in good faith by appropriate legal or administrative proceedings timely instituted and diligently prosecuted which shall operate to prevent the collection or satisfaction of the tax, charge, levy, assessment, Lien or other imposition so contested, and the sale or forfeiture of the Unit or Units in question, or any part thereof or

interest therein, to satisfy the same or otherwise resulting from such noncompliance, and which shall not, in the judgment of Lessor or the Indenture Trustee, materially affect the interests or rights, powers, privileges, remedies or immunities of Lessor, the Indenture Trustee or any Holder; provided, however, that Lessee shall have given such security as may be required in said proceedings and such reasonable security as may be demanded by Lessor or the Indenture Trustee to ensure such payment and to prevent any sale or forfeiture of any Unit or Units, or any part thereof or interest therein, by reason of such nonpayment; and provided, further, that neither Lessor nor the Indenture Trustee nor any Holder would be in any danger of criminal liability, material civil liability or other liability or obligation for which no indemnification is provided hereunder, by reason of such nonpayment or noncompliance. Lessor will, at the request and expense of Lessee, cooperate with Lessee in any such proceedings. Without limiting the generality of Section 13 hereof, Lessee hereby assumes liability for, and agrees to hold Lessor, the Indenture Trustee and each Holder harmless against, any costs and expenses that it or they may incur related to any such contest, and Lessee hereby agrees to pay promptly any final judgment enforcing any such tax, charge, levy, assessment, Lien or imposition, and cause the satisfaction of record of the same.

17. NOTICES. All notices required or permitted under the terms and provisions hereof shall be in writing, and any such notice shall, except to the extent otherwise provided in Section 21, be deemed to have been duly given when delivered personally or otherwise actually received or five business days after being deposited in the United States mail, with proper postage for certified mail (return receipt requested), prepaid, addressed as set forth in the Participation Agreement or at such other address as any such party shall notify to the parties hereto and Indenture Trustee.

18. RENEWAL OPTION. Provided that no Event of Default (or any event or condition which, after the giving of notice or passage of time, or both, would constitute an Event of Default) shall have occurred and be continuing, Lessee shall to the extent then permitted by applicable law, have the following renewal option:

18.1. Exercise. As to all (but not less than all) of the Units then subject to the Lease, Lessee shall have the option to renew and extend the Applicable Term of this Lease for one additional term of two years (such term being referred to as a "Renewal Term"), upon and subject to the terms and conditions herein contained for the Basic Term of this Lease; provided, however, that (i) the Basic Rent payable for and during the Renewal Term shall be paid semi-annually on the Lease Payment Dates (as provided in Section 3.2 hereof), and each semi-annual payment shall be in an amount equal to the Renewal Rent for the Units subject to this Lease, and (ii) the Stipulated Loss Value payable at any time during the Renewal Term shall be an amount equal to the greater of (a) the Fair Market Sales Value of such Unit as of the beginning of such Renewal Term, or (b) an amount equal to percentages set forth on Schedule 2 hereto multiplied by the Purchase Price of such Unit. The Renewal Term shall commence immediately upon the expiration of the Basic Term. Lessee shall give Lessor written notice of any such election at least 180 days prior to the commencement of the Renewal Term.

18.2. Determination of Value. For purposes of this Section 18, the Fair Market Sales Value of the Units shall be determined by mutual written agreement of Lessor or Lessee, or upon the request of either Lessor or Lessee at any time prior to such mutual agreement by the Appraisal Procedure, the costs of which shall be borne by Lessee.

## 19. PURCHASE OPTION.

19.1 Lessee's Right to Purchase at End of Term. As to all (but not less than all) of the Units, Lessee shall have the right to purchase such Units subject to this Lease at the end of the Applicable Term for each such Unit, such right to be exercised by Lessee giving notice to Lessor, prior to 180 days before expiration of the Applicable Term for each such Unit, that Lessee wishes to purchase such Units. If Lessee wishes to purchase the Units, the purchase price of each Unit shall be equal to the lesser of (i) the Fair Market Sales Value thereof or (ii) the Purchase Percentage of the Purchase Price of such Unit. Any purchase of Units made by Lessee pursuant to the foregoing provisions of this Section 19.1 shall occur only if no Event of Default or event which with notice or lapse of time or both would

constitute an Event of Default shall have occurred and be continuing.

19.2. Transfer of Title to Lessee. In the event that, by reason of this Section 19, Lessee purchases any Unit, Lessor shall, upon receipt of the purchase price therefor, give to Lessee, a bill of sale transferring to Lessee, all of Lessor's right, title and interest (including warranties, if any) in and to such Unit free and clear of any Lessor's Liens but otherwise without representation or warranty of any type whatsoever.

19.3. Determination of Value. For purposes of this Section 19, the Fair Market Sales Value of any Unit shall be determined by mutual written agreement of Lessor or Lessee, or upon the request of either Lessor or Lessee at any time prior to such mutual agreement by the Appraisal Procedure the costs of which shall be borne by Lessee.

## 20. ASSIGNMENT; CONSENT OF INDENTURE TRUSTEE.

20.1. Assignment. Except for subleases permitted hereby, Lessee will not assign any of its rights hereunder.

20.2. No Modification without Indenture Trustee's Consent. No amendment or modification of, supplement to or waiver by, or consent of Lessor in respect of, any of the provisions of this Lease or a decrease in the Basic Rent or Stipulated Loss Values pursuant to Section 3.4 hereof, and no termination or surrender of this Lease, shall be effective unless and until the Indenture Trustee shall have joined in, or consented to, such amendment, supplement, modification, waiver, consent, termination or surrender or shall have given its prior written consent thereto; provided, however, that no such consent shall be required for an amendment or modification of, or supplement to or waiver by, or consent of Lessor in respect of, Sections 18 and 19 hereof unless such amendment or waiver could in the judgment of the Indenture Trustee be adverse to the interests of Indenture Trustee or the Holders, and provided, further, that such consent to a decrease in Basic Rent or Stipulated Loss Values pursuant to Section 3.4 hereof shall not be withheld if, after giving effect to the decrease in Basic Rent or Stipulated Loss Values proposed to be made, the Rent under this Lease will be sufficient to pay the principal of, premium, if any, and interest on the Secured

Notes as the same shall be due and payable in accordance with the terms of the Indenture, and Lessor and Lessee shall have provided the Indenture Trustee with computations demonstrating that such decreased Rent is sufficient to make such payments.

21. INDENTURE AS SECURITY FOR SECURED NOTES. In order to secure the indebtedness evidenced by the Secured Notes, the Indenture provides, among other things, for the assignment by Lessor to the Indenture Trustee of certain of the rights of Lessor in this Lease, in the Collateral Bond Fund (as defined in the Collateral Agreement), and Lessor's interest in and to the Units and for the creation of a security interest in the Trust Estate in favor of the Indenture Trustee for the benefit of the Holders from time to time of the Secured Notes. Lessee hereby acknowledges notice of and consents to the assignment of Lessor's right, title and interest in, to and under this Lease and in and to the Units to the Indenture Trustee to the extent provided in the Indenture, and agrees that, until it shall receive notice from the Indenture Trustee stating that the security interest in the Trust Estate under the Indenture has been released, (i) Lessee will make all payments of Interim Rent, Basic Rent and Supplemental Rent (other than Excluded Amounts) payable to Lessor hereunder to the Indenture Trustee on or prior to the due date for the payment to be made, and the Lessee hereby consents to the application and distribution of payments as provided in the Indenture; (ii) the Indenture Trustee may enforce any and all of the terms of this Lease as though the Indenture Trustee had been expressly made a party hereto; provided, however, that the Indenture Trustee may not declare an Event of Default hereunder on account of a failure by Lessee to make a payment under the Indemnity Agreement or to perform or observe any other covenant, condition or agreement under the Indemnity Agreement or to pay any Excluded Amount, and provided, further, that subject to the provisions of Section 2.4 hereof neither Lessor nor the Indenture Trustee or any other Person deriving rights hereunder or in or to any Unit from Lessor will in the absence of a Default or Event of Default take any action thereunder contrary to Lessee's rights under this Lease, including without limitation the right to quiet enjoyment and peaceful and undisturbed use and possession of each Unit, except in accordance with the provisions of this Lease; (iii) no action taken, suffered or omitted by Lessor shall adversely



affect or limit any rights, powers, privileges, remedies or immunities of the Indenture Trustee or any Holder, and Lessee will not assert against the Indenture Trustee or any Holder any claim or defense that it may now or hereafter have against Lessor; (iv) such assignment will not release Lessor from any of Lessor's obligations under this Lease, and will not constitute an assumption of any such obligations on the part of the Indenture Trustee (other than the obligation to apply such amounts as provided in the Indenture); and (v) all notices, offers, demands, consents, requests, waivers, approvals, statements, instruments, papers, communications or other documents given by Lessee under this Lease will also be given to the Indenture Trustee and each Holder (so long as it or its nominee holds any Secured Note), and no such notice, offer, demand, consent, request, waiver, approval, statement, instrument, paper, communication or other document shall be of any effect unless and until so given. Notwithstanding the exercise by the Indenture Trustee of any rights or remedies under or in respect of the Indenture, Lessee shall not be relieved of the obligation to perform all the terms and provisions to be performed by Lessee under this Lease, and this Lease shall not terminate or be otherwise affected by reason of any such exercise of any such rights and remedies, except as expressly provided herein or in the Indenture.

## 22. MISCELLANEOUS.

22.1. Severability. Any provision of this Lease which shall be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent that Lessee may effectively do so, Lessee hereby waives any provision of law which shall render any provision hereof prohibited or unenforceable in any respect.

22.2. Written Changes Only. No term or provision of this Lease may be changed, waived, discharged or terminated orally, but, subject to the provisions of Section 20.2, hereof, only by an instrument in writing signed by the

party against whom the enforcement of the change, waiver, discharge or termination shall be sought.

22.3. Nature of This Lease. This Lease shall constitute an agreement of lease, and except as otherwise provided in Section 19 hereof, nothing herein shall be construed as conveying to Lessee any title to or ownership of the Units, the rights and interest of Lessee hereunder with respect to and in the Units being those of a lessee only.

22.4. Payments. All computations of interest and amounts equivalent to interest under this Lease shall be made on the same basis as interest is computed on the Secured Notes then outstanding. All payments of Rent, and all other payments to be made in respect hereof, shall be made in immediately available funds prior to noon on the due date at the place of payment. Notwithstanding any provision hereof to the contrary, any payment of Rent due on a day which is not a Business Day shall be made on the next preceding Business Day.

22.5. Successors and Assigns. Subject to the limitations set forth in the Participation Agreement and the Indenture, this Lease shall be assignable in whole or in part by Lessor without the consent of Lessee. Lessee shall be under no obligation to any assignee of Lessor except upon written notice of such assignment from Lessor.

This Lease shall be binding upon, and shall inure to the benefit of and be enforceable by, Lessee and Lessor and their respective successors and assigns permitted hereunder (whether or not such successors and assigns shall be expressly referred to in any provisions hereof). Notwithstanding the foregoing, to the extent that any provision of this Lease shall purport to confer directly upon the Indenture Trustee or any Holder any right, power, privilege, remedy or immunity, such provision shall inure to the benefit of, and be enforceable by, such Person or Persons, as the case may be.

22.6. Headings. The captions and headings in this Lease are for convenience of reference only, and shall not define or limit any of the terms or provisions hereof or affect the construction or interpretation thereof.

22.7. Governing Law. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to any additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment or notice hereof shall be filed, recorded or deposited.

22.8. No Merger. There shall be no merger of this Lease or of the leasehold interest thereby created with the title to the Units or any portions thereof or interest therein by reason of the fact that the same Person may acquire or hold directly or indirectly this Lease or the leasehold interest created hereby or any interest in this Lease or in any such leasehold interest as well as the title to the Units.

22.9. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart containing the receipt therefor executed by the Indenture Trustee on the signature page thereof shall evidence the monetary obligations of Lessee hereunder and thereunder, and to the extent, if any, that this Lease constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no security interest in this Lease may be created by the transfer or possession of any counterpart hereof other than such counterpart.

22.10. Right to Perform. If Lessee shall fail to comply with any of its covenants herein contained, Lessor may, but shall not be obligated to, make advances to perform the same and to take all such action as may be necessary to obtain such performance. Any payment so made by Lessor and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection therewith shall be payable by Lessee to Lessor upon demand as Supplemental Rent hereunder, with interest at the Default Rate. No such performance or compliance by the Lessor shall be deemed a waiver of the rights and remedies of the Lessor or any assignee of the Lessor against the Lessee hereunder or be deemed to cure the default of the Lessee hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed under their respective corporate seals by their respective duly authorized officers.

CHASE MANHATTAN SERVICE CORPORATION

By

Frank Saurz  
Title: VP

TRAILER TRAIN COMPANY

By

\_\_\_\_\_  
Title:



STATE OF NEW YORK )

COUNTY OF NEW YORK )

On this eleventh day of October, 1985, before me personally came Mr. Frank Sainz to me known, who, being by me duly sworn, did depose and say that he is Vice President of Chase Manhattan Service Corporation, which corporation is described in and executed the foregoing instrument; and he duly acknowledged to me that he signed his name thereto by order of the Board of Directors of said corporation and that the execution of the foregoing instrument was the free act and deed of said corporation.

*Tsugumichi D. Watanabe*  
Notary Public

TSUGUMICHI D. WATANABE  
NOTARY PUBLIC, State of New York  
No. 24-4794207  
Qualified in Kings County  
Certificate Filed in New York County  
Commission Expires March 30, 1988

STATE OF ILLINOIS,       )  
                                  )SS.:  
COUNTY OF COOK,        )

On this 14th day of October, 1985, before me personally appeared R. E. Zimmerman, to me personally known, who, being by me duly sworn, says that he is the Vice President and Treasurer of TRAILER TRAIN COMPANY, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
Notary Public

(Notarial Seal)

My Commission Expires November 15, 1988

If this counterpart of the foregoing Equipment Lease Agreement is the counterpart executed by Mercantile Safe-Deposit and Trust Company in the space provided below, this counterpart is the original counterpart, the possession of which will perfect security interests granted in such Equipment Lease Agreement to the extent, if any, that such Equipment Lease Agreement constitutes chattel paper (as defined in the Uniform Commercial Code of any applicable jurisdiction).

MERCANTILE SAFE-DEPOSIT AND TRUST  
COMPANY

not in its individual capacity,  
but solely as Indenture  
Trustee\*

By \_\_\_\_\_  
Vice President

\_\_\_\_\_  
\* Signature on the original copy only.



DESCRIPTION OF UNITS

First Closing

Builder/Description

Contract No.

Quantity

Car No.'s

Thrall Car  
Manufacturing Co.

5-platform articu-  
lated double-stack  
container-well car

T-1285-T

25

62095-62119  
(inclusive)

Gunderson, Inc.

5-platform articu-  
lated double-stack  
container-well car

T-1085-F

98

63000-63013-  
63016-63099  
(inclusive)

TOTAL

123  
==

Second Closing

Gunderson, Inc.

5-platform articu-  
lated double-stack  
container-well car

T-2085-F

75

63100-63174  
(inclusive)

T-4085-F

4

63175-63178  
(inclusive)

TOTAL

79  
==

• • • Stipulated Loss Value for an Event of Loss occurring during the relevant period for the Particular Unit as compensation for Investment Tax Credit recapture:

<u>Period</u>	<u>ITC Recapture Amounts</u>
From the date of closing on which the particular Unit was delivered (the "Closing") through and including the first anniversary of such Closing,	16.20872
thereafter, through and including the second anniversary of such Closing,	12.96702
thereafter, through and including the third anniversary of such Closing,	9.72526
thereafter, through and including the fourth anniversary of such Closing, and	6.48351
thereafter, through and including the fifth anniversary of such Closing.	3.24175

INTERIM RENT

and

BASIC LEASE PERCENTAGES

I.	<u>Interim Rent:</u>	<u>Percentage of</u> <u>Purchase Price</u>
	Daily Average Equivalent of Basic Rent:	.03171075

II. Basic Rent:

<u>Basic Term Payment Dates</u>	<u>Number of</u> <u>Payments</u>	<u>Basic Lease</u> <u>Percentage</u>
July 2, 1986 -- January 2, 1991	(10)	5.1371411
July 2, 1991 -- January 2, 1996	(10)	6.2787281

III. Renewal Rent:

<u>Basic Term Payment Dates</u>	<u>Number of</u> <u>Payments</u>	<u>Basic Lease</u> <u>Percentage</u>
1. July 2, 1986 -- January 2, 1991	(4)	2.8539672

Stipulated Loss Value Schedule  
Interim and Basic Term

<u>Lease Payment</u> <u>Date</u>	<u>Stipulated Loss Value*</u>
01/02/86	88.33**
07/02/86	87.40**
01/02/87	88.51**
07/02/87	86.96**
01/02/88	86.88**
07/02/88	84.90**
01/02/89	83.58**
07/02/89	81.10**
01/02/90	78.70**
07/02/90	75.95**
01/02/91	73.40**
07/02/91	69.19
01/02/92	65.12
07/02/92	60.63
01/02/93	56.30
07/02/93	51.54
01/02/94	46.89
07/02/94	41.96
01/02/95	37.13
07/02/95	32.09
01/02/96	27.12
<u>Renewal Term</u>	
07/02/96	25.41
01/02/97	23.72
07/02/97	21.86
01/02/98	20.00

\* As a percentage of Purchase Price for each Unit.

\*\* The following amounts, expressed as a percentage of Purchase Price for each Unit, are to be added to the